United Nations AT/DEC/1114

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1114

Case No. 1214: AMEEN Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Spyridon Flogaitis;

Whereas at the request of Zeyad Easa Mohammed Ameen, a former staff member of the United Nations High Commissioner for Refugees (UNHCR), the President of the Tribunal, with the agreement of the Respondent, extended to 31 August 2001 the time limit for the filing of an application with the Tribunal;

Whereas, on 1 August 2001, the applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 November 2001, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read, in part, as follows:

"PLEAS:

A: The ... Tribunal is hereby requested to order UNHCR to submit/provide ... documents/witnesses: ...

...

B: The decision of the Chief of Mission, UNHCR, Baghdad ... to withdraw recommendation of [fixed-term appointment] is contested as it was illegal and in violation of the ... Staff Rules and Regulations. Also, the decision to defer issuance of [fixed-term appointment] ... which has never been copied to me, is contested. The decision to abolish my post

> without observance of the seniority, post/function essentialness and type of contract is contested. ...
>
> ...
>
> D: An amount of **US$ 250,000.00** ... is requested from UNHCR as ... compensation for the physical and psychological damages ... Also, I am hereby requesting UNHCR to reinstate with immediate effect my contract and post."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2002 and periodically thereafter until 18 October 2002;

Whereas the Respondent filed his Answer on 31 October 2002;

Whereas the Applicant filed Written Observations on 11 February 2003;

Whereas, on 3 July 2003, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined UNHCR on 1 November 1995, on a two-month short-term appointment as Assistant at the GL-4 level, in Dohuk, Iraq. His appointment was extended several times. On 7 December 1996, the Officer-in-Charge, UNHCR, Baghdad, recommended that the Applicant be granted a fixed-term appointment to fill the post of Senior Field Assistant, Dohuk, a position he had been occupying on short-term contracts since April 1996.

On 13 February 1996 (sic.), the Field Office, Dohuk, was informed that it had not been possible to obtain an ID card for the Applicant from the Iraqi Ministry of Foreign Affairs (MOFA). Subsequent efforts were made to aquire an ID card for the Applicant. In the meantime, the Applicant continued to be employed on short-term appointments.

On 11 May 1997, the Applicant was informed that efforts to get him an ID card had not yet been successful; that without an ID card, he would be restricted in his ability to leave his duty station for travel to Baghdad or abroad and, consequently, his services would not be efficiently utilized; and that, pending response from MOFA, his short-term appointment would be extended until the end of June 1997.

On 30 June, the Division of Human Resources Management, Geneva, (DHRM) informed the Chief of Mission, Baghdad, that UNHCR-Baghdad, was to continue

negotiations with MOFA and that the matter should be taken up at the inter-agency level. Until a solution is found, the Applicant's appointment was to be extended on a monthly basis. The Applicant was informed of this on 12 July.

On 24 November 1997, the Chief of Mission, Baghdad, informed DHRM, that MOFA had approved the issuance of ID cards to several local staff members, including the Applicant. Therefore, he confirmed the request of 7 December 1996, recommending that the Applicant be granted a fixed-term appointment as of 1 December 1997. On 1 May 1998, the Applicant was granted a one-year fixed-term appointment as Senior Field Clerk, Dohuk, at the GL-4 level.

On 10 July 1998, the Applicant requested that the effective date of his fixed-term appointment be changed from 1 May 1998 "to the neighbourhood of December 1996".

On 15 September 1998, DHRM wrote to the Applicant informing him that, following a programmatic review of the operations in Iraq, his post had been slated for abolition. Consequently, his appointment would be terminated effective 30 September 1998 and he would receive compensation in lieu of notice as well as termination indemnity. The Applicant separated from service on 30 September.

On 24 November 1998 the Applicant requested the Secretary-General to review the administrative decision to terminate his contract and the decision to defer the issuance of his fixed-term appointment.

On 5 March 1999, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 15 December 2000, the JAB adopted its report. Its considerations, conclusions and recommendations read, in part, as follows:

> **"Considerations**
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> ...
>
> 70. Therefore, the Panel concluded that the Appellant's appeal against the 'decision to defer the issuance of his fixed-term appointment' was time-barred and not receivable.
>
> ...
>
> 79. ... the Panel underlined ... that, it can examine whether the established procedure has been followed ... But, the Panel cannot enter to examine the necessity to abolish or not a given post or to choose between two posts, which one must be abolished.
>
> ...

81. ... the Panel deemed that, the Appellant did not provide evidence in support of ... alleged discrimination.

...

Conclusions and Recommendations

87. The Panel **concludes** that the appeal against the decision to defer the issuance of the Appellant's fixed-term appointment is irreceivable.

88. The Panel **concludes** that the decision to terminate the Appellant's contract following the abolition of his post was not tainted by procedural flaw or irregularity and that according to the applicable law, all the amounts to which the Appellant was entitled to, have been paid to him.

89. Therefore, the Panel makes **no recommendation** to the Secretary-General in support of the present appeal."

On 24 January 2001, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's conclusions and had decided to take no further action on his appeal.

On 7 November 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The termination of the Applicant's contract was unfair and unjustified. No consideration was given to his contractual status, the functions he fulfilled or his seniority.

2. The Respondent erred when insisting that the Applicant have an ID card issued by the Iraqi Government as a precondition to granting him a fixed-term appointment.

3. The Applicant suffered discrimination.

4. The deferment of granting him a fixed-term appointment delayed the Applicant's promotion, impeded his participation in the UNJSPF and deprived him of dependency allowance.

Whereas the Respondent's principal contentions are:

1. The Applicant's rights were not violated by the Administration's decision to terminate his fixed-term appointment following the abolition of his post.

2. The Applicant's rights were not violated by the Administration's deferral in granting him a fixed-term contract.

The Tribunal, having deliberated from 3 to 24 July 2003, now pronounces the following Judgement:

I. The Applicant joined UNHCR in Dohuk, Iraq, on 1 November 1995, on a short-term appointment at the GL-4 level. His appointment was extended numerous times, until 30 April 1998. On 7 December 1996, the Applicant was recommended for the post of Senior Field Assistant in the Dohuk field office, and it was further recommended that he be granted a fixed-term contract. Effective 1 May 1998, the Applicant was granted a fixed-term appointment, under which he served until his separation from service, on 30 September 1998.

II. The initial request and recommendation for granting the Applicant a fixed-term appointment was not implemented, due to the Iraqi government's refusal to grant him a MOFA ID card, as in the absence of such a card, it would have been practically impossible for the Applicant to fully exercise the functions and duties required of him in the new post. The Applicant consequently was kept on short-term contracts, pending the issuance by the Iraqi authorities of a MOFA ID card. During this period, UNHCR continued in its efforts to obtain the card for the Applicant, until it was finally received, on 24 November 1997.

III. On 25 September 1998, DHRM advised the Applicant that his post was among several posts slated for abolition and that therefore his contract would be terminated, with effect from 30 September 1998. The Applicant was further informed that he would be paid compensation in lieu of notice in accordance with staff rule 109.3, as well as termination indemnity in accordance with staff regulation 9.3 (a).

On 24 November 1998, the Applicant requested administrative review of both the decision to terminate his appointment and the decision to defer the issuance of his fixed-term contract as a Senior Field Assistant in the Dohuk Field Office. On 5 March 1999 the Applicant lodged an appeal with the JAB.

IV. The Tribunal first turns its attention to the request for review of the administrative decision to defer the issuance of the Applicant's fixed-term contract.

The Tribunal concurs with the JAB that this request is time-barred and therefore not receivable. Staff rule 111.2(a) requires that a staff member request administrative review within two months of receiving notification of the contested decision. Accordingly, the deadline for the Applicant to request administrative review had already expired when the request was made. Staff rule 111.2(f) states that "[a]n appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived ..."

The Tribunal has consistently held that time limits are of utmost importance for the functioning of the Organization and must therefore be strictly adhered to. (See Judgements No. 579, *Tarjouman* (1992); No. 1046, Diaz de Wessely (2002).)

The Applicant failed to keep the prescribed time limits and the Tribunal, like the JAB, is not satisfied that there were circumstances warranting their waiver. Consequently, the Applicant's request regarding the delay in the issuance of his fixed-term appointment is not receivable.

V. The Tribunal turns now to the Applicant's request, to annul the Organization's decision to separate him from service.

The Tribunal notes that, the Applicant was separated from service due to the abolition of his post, which was amongst several posts slated for abolition. The Tribunal's jurisprudence is consistent in affirming the Secretary-General's discretion in the management of the Organization. This includes the authority to reorganize, redeploy and hire and fire staff members. The Tribunal will not interfere with the Secretary-General's exercise of this discretionary power, except for cases where it considers that the decision was reached in violation of a staff member's rights, or that it was procedurally flawed. (See Judgements No. 632, *Mughir* (1993) and No. 732, *Akkawi* (1995) where it was stated that "the Tribunal will not enter into the merits of the reasons for the abolition. It examines the reasons proffered only to discover whether the case put forward by the Respondent could be said to be perverse in the circumstances.")

The Tribunal notes the JAB's conclusion that, the aforesaid decision was reached at without violating the Applicant's rights. Having reviewed the file, the Tribunal is satisfied that this decision was not tainted by procedural flaw or irregularity, nor did it violate the Applicant's rights. Furthermore, the Applicant's separation from service was carried out in compliance with the Staff Regulations

and Rules, as cited in the separation letter, and all amounts which were due to the Applicant were indeed paid to him.

VI. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Kevin **Haugh**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Spyridon **Flogaitis**
Member

Geneva, 24 July 2003

Maritza **Struyvenberg**
Executive Secretary

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